REMARKS/ARGUMENTS

The Restriction Requirement

The Office has required restriction among the following five groups of claims:

Group I: Claims 1-16, drawn to an immunotherapeutic composition comprising an isolated nucleic acid capable of producing an infectious Kunjin virus;

Group II: Claims 17-29, drawn to a method of immunizing an animal comprising administering an isolated nucleic acid capable of producing an infectious Kunjin virus;

Group III: Claims 30-32, drawn to a non-human animal;

Group IV: Claims 33-35, drawn to an immunocompetent biological material isolated from an immunized animal; and

Group V: Claims 36 and 37, drawn to a method of using Kunjin virus to identify another flavivirus against which Kunjin virus is suitable for use as an immunogen.

Applicants' Election

Applicants elect, with traverse, the claims of Group II (i.e., claims 17-29) for further prosecution.

Discussion of the Restriction Requirement

The Manual of Patent Examining Procedure (M.P.E.P.) recites the requirements for a proper restriction requirement. In particular, the M.P.E.P. states that there are two criteria for proper restriction between patentably distinct inventions: (a) the inventions must be independent, *and* (b) there must be a serious burden on the examiner in the absence of restriction. See M.P.E.P. § 803. These are two separate criteria that must be satisfied to support a proper restriction requirement. The fact that both criteria must be satisfied is made all the more clear by the following statement in the M.P.E.P.: "If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions." M.P.E.P. § 803 (emphasis added).

Applicants respectfully submit that the restriction requirement between the claims of Groups I and II is improper because the nature of the claims is such that any burden

encountered in searching and examining the two groups of claims at the same time would, at most, be slight and would not be "serious."

More specifically, the claims of Group I are directed to an immunotherapeutic composition comprising an isolated nucleic acid capable of producing an infectious Kunjin virus together with a carrier, diluent, or excipient, which, upon administration to an animal, elicits a protective immune response to at least another flavivirus. The claims of Group II are directed to a method of immunizing an animal including the step of administering an isolated nucleic acid capable of producing an infectious Kunjin virus to the animal to thereby elicit a protective immune response to at least another flavivirus. Thus, the method claims of Group II are directed to the administration of an isolated nucleic acid capable of producing an infectious Kunjin, which isolated nucleic acid forms the composition of the claims of Group I.

In view of the nature of the claims of Groups I and II, a search of the claims of Group I likely would be similar in scope to a search of the claims of Group II, and the two searches likely would yield similar search results. As such, the search and examination of the claims of Groups I and II at the same time would not place a "serious burden" on the Examiner.

For these reasons, Applicants respectfully request withdrawal of the restriction requirement at least as between Groups I and II.

Conclusion

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

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